IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 21923 of 2004

Between:

The Markapur Town Muslim Welfare Development Society, Markapur, rep by Secretary Mr. Shaik Nazeer
Basha S/o Peer Ahmed, RTA & LIC Agent, R/o H. No. 10/506, Markapur, Prakasam District

..... PETITIONER

AND

1 The A.P. State Wakf Board repby Chief Executive Officer, Haj House Complex, Opp Public Gardens,
Nampally, Hyderabad
2 The Inspector Auditor Wakf, C/o O/o the District Revenue Officer, Ongole, Prakasam District
3 Sri Mirzakhalilulla Baig S/o late Mahboob baig,
Jamia Masque, 2nd ward, Markapur, Prakasam District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction particularly one in the nature of Writ of Mandamus, declaring the impugned Memo Bearing No. F. No. 10/L2/PRKM/2004 dt 4-9-2004 as being illegal and contrary to Sec. 32 Sec. 63 and Sec. 70 of the Wakf Act, 1995.

Counsel for the Petitioner:MRSYED SHAREEF AHMED

Counsel for the Respondents 1 and 2 : MR.S.M.SUBHANI (SC FOR AP WAKF BOARD)

The Court at the stage of admission made the following ORDER:

Petitioner, The Markapur Town Muslim Welfare Development Society, has filed this writ petition assailing the correctness of memo dated 04.09.2004 issued by the A.P. State Wakf Board, the first respondent.

The memo came to be issued on the basis of a representation dated 03.10.2003 submitted by the petitioner and a direction by this Court in W.P.No.4426 of 2004. It related to the appointment of Mutavalli to Mosque and Edgah of Markapur.

Initially, Sri Mahaboob Baig was the Mutavalli of the Mosque and Edgah in question. He had five sons. On his death, his second son Mirza Amanullah Baig was appointed as Mutavalli. He died on 23.05.2003. Thereupon, the third son viz. Mirza Khaleelullah Baig submitted an application on 10.08.2003 to appoint him as Mutavalli. The first respondent, in turn, issued a notification dated 29.08.2003 inviting objections. The petitioner submitted its objections on 03.10.2003. Reeling under the impression that no action has been taken on its representation, it filed W.P.No.4426 of 2004. The writ petition was disposed of on 23.07.2004 with a direction to the first respondent to consider the objections and pass appropriate orders. In pursuance of the same, the first respondent passed the orders in the impugned memo.

Learned counsel for the petitioner submits that the observation in the impugned memo that the petitioner has to avail the remedy under Section 70 of the Wakf Act, 1995 (for short 'the Act') is without basis and that the appointment of the

third respondent was made contrary to the provisions of the Act.

Learned standing counsel for respondents 1 and 2, on the other hand, submits that the third respondent is undisputedly a legal heir of the deceased Mutavalli and that the appointment was made after inviting objections from the public at large.

The petitioner was not aware of the fact that the first respondent appointed the third respondent as Mutavalli in pursuance of a notification issued on 29.08.2003. The petitioner submitted its objections on 03.10.2003 itself. The same is deemed to have been taken into account when the third respondent was appointed as a Mutavalli through proceedings dated 12.12.2003. As long as the order of appointment of the third respondent is not challenged, the petitioner cannot seek the relief of constitution of a committee for administrating the said Wakf. The observation of the first respondent that the petitioner has to avail the remedy under Section 70 of the Act is virtually of no consequence. It is for the petitioner to take such steps as it intends to do in the given set of circumstances.

Hence, the writ petition is disposed of leaving it open to the petitioner to assail the appointment of the third respondent, if it is so advised or to work out its remedies according to the provisions of the Act. No order as to costs.

01.12.2004

ksld

To

1 The A.P. State Wakf Board repby Chief Executive Officer, Haj House

Complex, Opp Public Gardens,
Nampally, Hyderabad

2 The Inspector Auditor Wakf, C/o O/o the District Revenue Officer,

Ongole, Prakasam District

3 Two CD copies.